

REMARKS

Claims 1 – 10, 13 – 14, 16 – 26, 29 – 30, 32, 34 – 36, 38 – 43, 45 – 46, 49 – 50, 52 – 57, 59 – 63 are pending.

Claims 33, 37, 47, 51 and 58 have been canceled, without prejudice or disclaimer of the subject matter contained therein.

Claims 1 – 10, 13 – 14, 16 – 26, 29 – 30, 32 – 43, 46 – 47 and 49 – 58 have been rejected.

Claims 1, 4, 14, 17, 20, 30, 34 and 50 have been amended.

Amendments to the Claims

Minor typographical errors have been corrected in line 4 of claims 1, 4, 14 and 34.

Further, independent claims 1, 4, 14, 17, 20, 30, 34 and 50 have been amended to specify that measured physiologic parameters be pressure, heart rate variability and activity level.

Support for the amendments to the claims may be found, for example, in paragraph 66 and in paragraphs 70-74 of the application, in reference to FIGS. 8, 10 and 11. No new matter has been added.

Double Patenting

Claims 1-10, 13-14, 16-26, 29-30, 32-43, 46-47 and 49-57 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-58 of copending Application No. 10/727,008. Since the rejection is provisional, Applicants will address the provisional rejection once claims have been allowed.

Rejections Under 35 USC § 102

Claims 1-10, 13-14, 16-26, 29-30, 32-43, 46-47 and 49-58 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Stadler, et al., U.S. Patent Publication No. 2004/0172080 ("Stadler").

The claims of the invention set forth generating measured physiologic parameters, the measured physiologic parameters being one of pressure, heart rate variability and activity level, and updating one of an adaptive baseline trend and a short term trend, the one of the adaptive baseline trend and the short term trend being updated by a first variable in response to the measured physiologic parameters being pressure, updated by a second variable not equal to the first variable in response to the measured physiologic parameters being heart rate variability, and updated by a third variable not equal to the first variable and the second variable in response to the measured physiologic parameters being activity level.

While Stadler teaches using activity sensors and updating an adaptive baseline trend and a short term trend associated with generated measured impedances, Stadler does not teach generating measured physiologic parameters, the measured physiologic parameters being one of pressure, heart rate variability and activity level, and updating one of an adaptive baseline trend and a short term trend, the one of the adaptive baseline trend and the short term trend being updated by a first variable in response to the measured physiologic parameters being pressure, updated by a second variable not equal to the first variable in response to the measured physiologic parameters being heart rate variability, and updated by a third variable not equal to the first variable and the second variable in response to the measured physiologic parameters being activity level, as set forth in the claims of the present application. Therefore, claims 1-10, 13-14, 16-26, 29-30, 32-43, 46-47 and 49-58 are patentably distinguishable from Stadler. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 1-10, 13-14, 16-26, 29-30, 32-43, 46-47 and 49-58 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hautala, et al., U.S. Patent Publication No. 2001/0027266 ("Hautala").

Hautala teaches calculating a heart rate variation, defined as temporal variations in heart beats around the expected moment when the heart should beat, using either a standard deviation or a distribution function. Hautala does not teach generating measured physiologic parameters, the measured physiologic parameters being one of pressure, heart rate variability and activity level, and updating one of an adaptive baseline trend and a short term trend, the one of the adaptive baseline trend and the short term trend being updated by a first variable in response to the measured physiologic parameters being pressure, updated by a second variable not equal to the first variable in response to the measured physiologic parameters being heart rate variability, and updated by a third variable not equal to the first variable and the second variable in response to the measured physiologic parameters being activity level, as set forth in the claims of the present invention. Therefore, claims 1-10, 13-14, 16-26, 29-30, 32-43, 46-47 and 49-58 are patentably distinguishable from Hautala. Accordingly, withdrawal of the rejection is respectfully requested.

New Claims Added

New claims 59-63 have been added. New claims 59 and 60 correspond to originally filed but previously canceled claims 11 and 12, respectively, and new claims 61-63 correspond to originally filed but previously canceled claims 27, 28 and 31, respectively. No new matter has been added. Accordingly, entry and allowance of new claims 59-63 is respectfully requested.

Conclusion

There being no further outstanding objections or rejections, it is respectfully submitted that claims 1 – 10, 13 – 14, 16 – 26, 29 – 30, 32, 34 – 36, 38 – 43, 45

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- 46, 49 - 50, 52 - 57, 59 - 63 should be allowable, this application is in condition for allowance and a notice to that effect is earnestly solicited.


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Respectfully Submitted,
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